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February 3, 2011

Via ECF

Hon. Patty Shwartz, U.S.M.J.
U.S. Post Office & Courthouse Bldg.
50 Walnut St., Room 477
Newark, NJ 07101

Re: Smart Trike USA, LLC v. Heinz KETTLER® GmbH & Co. KG, *et al.*
Civil Action No. 2:10-cv-2063(FSH)(PS)

Dear Judge Shwartz:

We are counsel to Defendant Heinz KETTLER® GmbH & Co., KG (“Heinz KETTLER®”) and Defendant/Counterclaim Plaintiff Kettler International Inc. (“Kettler Int.”) (collectively, “KETTLER”). We write to seek the Court’s guidance with respect to the Application for a Letter of Request for International Judicial Assistance in Italy pursuant to the Hague Convention with respect to discovery of Italtrike, s.r.l. (the “Application”) filed on behalf of Plaintiffs/Counterclaim Defendants Smart Trike Ltd., and Smart Trike USA, LLC (collectively, “Smart Trike”) and Counterclaim Defendant Ofrat Baby Toys Manufacturers, Ltd. (“Ofrat”).

KETTLER objects to the Application for a number of reasons. As counsel for Smart Trike and Ofrat are aware by reason of their prior representation of Italtrike in litigation with KETTLER, there is a contractual agreement between KETTLER, Italtrike and its owner, Stefano Gandolfi that prohibits Mr. Gandolfi and Italtrike from assisting anyone (directly or indirectly) in contesting the validity or enforceability of the patents-in-suit.¹ In the face of that prohibition, the Application nevertheless seeks information concerning that subject matter, as well as the information regarding litigation between KETTLER and Italtrike.

Further, the Letter of Request for International Judicial Assistance in Italy pursuant to the Hague Convention (“Letter Request”) filed by Smart Trike and Ofrat as Exhibit A to its Application is procedurally flawed in a number of respects by failing to conform to the requirements of the Hague Convention. For example, the names and address of all parties and

¹ Article 11 of the Hague Convention contemplates situations where the person concerned may refuse to give evidence, while section (b) of Article 11 states that the privilege or duty to refuse to give evidence can be specified in the Letter Request under Article 3 and Article 11.

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their representatives are required to be included in the Letter Request under Article 3 of the Hague Convention. The Letter Request filed by Smart Trike and Ofrat, however, does not identify either Heinz KETTLER® or Kettler Int.'s representatives in section 6, and fails to identify in section 12 either Heinz KETTLER® or Kettler Int.'s representatives in order to obtain notification of the time and place for execution. KETTLER believes there are additional procedural errors and omissions in Smart Trike and Ofrat's Letter Request, which have been communicated to counsel for Smart Trike and Ofrat.

In view of the fact that a telephonic status conference is currently scheduled for February 15, we suggest that any action with respect to the Application be deferred until the issue can be discussed at that conference. Alternatively, we request that Your Honor set a schedule for submitting a more formal opposition to the Application and for a hearing, if necessary, to be scheduled. We thank the Court for its consideration of this matter.

Respectfully submitted,

s/Mark I. Schlesinger

Mark I. Schlesinger

cc: All counsel (via ECF and e-mail)